



AMENDED SUMMARIZED MEETING MINUTES

**CITIZENS CODE OF ETHICS TASK FORCE
REGULAR MEETING
PINNACLE CONFERENCE ROOM
7575 EAST MAIN STREET
SCOTTSDALE, ARIZONA
FEBRUARY 7, 2006**

PRESENT: Art DeCabooter, Chairman
Jim Bruner
Jim Derouin
Dewey Schade
Ned O'Hearn
Rita Saunders-Hawranek
Margaret Dunn

STAFF: Dr. Teri Traaen
Jay Osborn

ALSO PRESENT: Michael Kelly
Tim Delaney, Center for Leadership, Ethics & Public Service

CALL TO ORDER

Chairman DeCabooter called the meeting to order at 5:04 p.m.

ROLL CALL

Chairman DeCabooter noted that all the Task Force Members were present as noted above.

OPEN CALL TO THE PUBLIC

Mr. Michael Kelly addressed the Task Force, stating that he had reviewed the minutes of all the Task Force meetings. He noted various concerns expressed by Task Force Members, including a concern about ethical political campaigns, unethical decision-making, and open and transparent government.

Mr. Kelly commented that there might be confusion between "open" and "ethical." Although Task Force Members may consider that these terms are not synonymous, Mr. Kelly noted that Scottsdale voters had ratified the General Plan, agreeing to be involved in government.

He noted Ms. Saunders-Hawranek's concerns for fuller disclosure and indirect conflicts. In his letter to the Task Force, Mr. Kelly suggested a process similar to a voir dire, to assure the public that matters are heard in an impartial manner.

Mr. Kelly stated that without sanctions, there is no program. Since many political careers start at the municipal level, it is only proper to train them in ethical sensitivity and decision-making.

APPROVAL OF THE MINUTES, JANUARY 31, 2006 MEETING

MR. O'HEARN MOVED THE APPROVAL OF THE MINUTES OF THE JANUARY 31, 2006 MEETING. MS. SAUNDERS-HAWRANEK SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

1. FINAL REVIEW OF PROPOSED COMPONENTS OF ETHICS POLICY/PROGRAM

Chairman DeCabooter noted that copies of the document were available for members of the public in attendance. Mr. Delaney led the discussion. He noted that Mr. O'Hearn had done landmark work in clarifying conflict of interest.

Mr. Delaney explained that he had changed the format of the document to reflect the three parts of the program. The first component is to advise people of the applicable laws. Education is the second part of the program and enforcement is the final part.

In the enforcement area, Mr. Delaney explained he tried to create balance. Good public servants deserve to be protected from frivolous complaints. Complainants would have to document, under penalty of perjury, that their complaint is legitimate. This is similar to a policy adopted by the City of San Antonio. Mr. Bruner commended Mr. Delaney for adding this component. Scottsdale would be the first Arizona city to adopt such a policy, which presents an opportunity for leadership.

A discussion ensued regarding the document. There was consensus that the word "qualification" used in the first section should be replaced by "prerequisite." Mr. Derouin commented that Mr. Delaney did an excellent job of drafting the document.

Mr. Derouin suggested that the enforcement provisions would be better placed at the end of the Code, rather than in the cover memo that defines the program. Mr. Delaney concurred.

Mr. Derouin pointed out that the language on line 4 of page 3 should make it clear that only one affidavit is required.

Mr. Derouin stated that his preference between the two options for dealing with complaints was to use an outside, independent person. Having a three-person panel to review complaints against City Council Members assures a more objective outcome. He suggested that the pool should include retired State Court judges and faculty members from the state law schools. The City might enter into a contract with potential panel members in advance. If a complaint were filed, things would be in place to follow the procedure.

Mr. O'Hearn agreed that it would make sense to place the enforcement procedures at the end of the Code. He suggested some improvements to the style for consistency and readability. In the section on enforcement, he suggested the following language in the paragraph at the top of page 3:

"The complaint shall identify all sources, including source contact information and how the information and/or belief was conveyed that precipitated the filing of the complaint."

He explained that this would ensure that anyone who comes forward with a complaint is compelled to reveal all of his or her sources.

Mr. O'Hearn's preference is to use the City Attorney to determine whether a complaint should go forward, except in circumstances where this would be inappropriate. The other process is potentially costly and time-consuming. He agreed that a three-person panel is better than one. Selecting the people in advance is a good idea.

Mr. O'Hearn stressed that it is critical that the process deter frivolous or politically motivated complaints. Under the section on frivolous complaints, he recommended changing the heading to "frivolous and/or politically motivated complaints." The beginning of the first sentence should be changed to read, "A person who knowingly makes a false, misleading, or unsubstantiated (based on hearsay) statement in a complaint..."

Further discussion ensued. Mr. Bruner pointed out that one could be politically motivated and still have a valid complaint. He suggested adding "frivolous and politically motivated complaints." Mr. Schade noted that provisions about motivation could be problematic. The provision of "under penalty of perjury" is sensible. Mr. O'Hearn noted that it is important to place the burden of proof on the complainant.

Ms. Dunn stated that she had no changes to suggest.

Ms. Saunders-Hawranek noted that she is comfortable with the document.

Mr. Bruner noted a typo in the final sentence in the first paragraph on page 3. It should read, "before a notary public or other person..." He agreed that the City Attorney should be responsible to investigate complaints against appointed members of boards and commissions.

Task Force Members debated the process to investigate complaints against Council Members. Mr. O'Hearn explained that his suggestion would eliminate a knee-jerk reaction for screening every complaint. Mr. Derouin reported that under the State Code of Ethics for attorneys, the City Attorney owes an obligation of confidentiality to the Council Members and Mayor. The City retains outside counsel under contract, and that would be an appropriate person to perform the initial review.

Mr. Bruner suggested adding a subsection to the Code dealing with appointed boards and commissions for the sake of clarity. In the event of a complaint against a Council Member or the Mayor, the County Attorney could act as a sounding board. Mr. Delaney stated that the Task Force might not want to designate who would specifically deal with these complaints, since circumstances can change. Mr. Osborn added that such cases could be referred to the City Attorney of another city. The Task Force could designate the cities considered suitable.

Mr. Schade disagreed with the three-person panel concept. The independence of the person making the decision is crucial. He advised Task Force Members that he no longer believes that an ethics officer position is a viable option.

A discussion ensued on the order the Code document should follow. Mr. O'Hearn and Mr. Delaney made flip charts, which Mr. Delaney will utilize upon redrafting the document.

The Task Force Members debated aspects of enforcement, expressing concerns with how to handle behavior by Council Members that was deemed unethical but not criminal. Mr. Derouin stated that it would be a blow for any Council Member if a panel of three judges concluded that he or she had acted unethically.

Mr. Delaney said he has researched this question since the last meeting. Based on his reading of the State statute, he believes that the City is allowed to adopt a Code of Ethics as an ordinance. It appears that if the Code is adopted as an ordinance, the City has the authority to enforce it. Enforcement can be through the administrative process under discussion, through civil penalties, or possibly through criminal penalties. He would advise against going that far. If the penalty were civil or criminal, the delay, expense, and uncertainty of legal proceedings would be negative factors. Mr. Delaney reminded the meeting that a really serious lapse could lead to a recall. The most serious matters are already covered by criminal law.

Mr. Schade felt there should be some provision for censure by City Council for egregious cases. Other bodies have the power to censure their members. Mr. Derouin stated that when City Council votes to accept or reject the panel's recommendations, this would constitute censure. Mr. Bruner said he believed the finding of the panel would, in fact, function as censure.

In reply to a question from Mr. O'Hearn, Mr. Delaney advised the meeting that City Council does have statutory authority to impose civil and/or criminal sanctions. However, as he outlined above, there are drawbacks to doing this. Discussion ensued concerning the advice that City Council was recently given. Mr. Osborn interjected that although different attorneys had different opinions, they did agree that with proper enacting legislation, City Council would have the authority to receive, review, and discuss reports of alleged ethical violations.

The Task Force Members discussed whether they wanted to recommend that City Council have the power to censure Council Members. Mr. Derouin urged the Task Force to strive for unanimity in order to be taken seriously. In response to a query by Ms. Dunn, Mr. Delaney noted that San Antonio has a number of enforcement options. Ms. Dunn stated that the larger size of San Antonio made these options desirable, but that in Scottsdale there was not a need for such censure. Mr. Bruner noted that he understands Mr. Schade's position. This is the first Code of Ethics the City has ever had and he stated that it is important to enact a Code that the City Council is comfortable with. Ms. Saunders-Hawranek noted that the goal should be to present City Council with a Code of Ethics that Council will accept.

In response to a question from Mr. Schade, Mr. Delaney agreed that the phrase "without merit" is somewhat vague. He proposed the following: "Within 15 days, either return it for being incomplete; dismiss it for being without merit if the complaint on its face fails to state allegations that if true would violate the Code or any laws; ..."

Mr. Schade complimented Mr. O'Hearn on his yeoman service in drafting the Code. In the second paragraph of the Open Government section, he suggested the following amendment: "Indeed, City officials are encouraged to employ a 'mindset of openness.' Such a mindset should lead City officials to consider that although State law allows the discussion of a specific matter in executive session, closed meetings should be utilized as infrequently as possible and only in clearly compelling circumstances. In conducting the affairs of the City, City officials should think carefully before voting..."

A discussion ensued on the appropriateness of the proposed language, given the section on executive sessions that follows. Task Force Members concurred that the proposed language should be inserted into the section on executive sessions.

A general discussion on wording and grammatical consistency in the document ensued. Mr. Delaney noted the concerns and undertook to polish the document. Mr. Bruner commented that although he intended no reflection on Mr. Delaney, the Task Force needed to have another meeting in order to review the edited document.

The Members of the Task Force discussed the concept of open government and the ramifications of the Open Meeting Law, noting that this complex issue affects the day-to-day business of boards and commissions. Mr. Delaney undertook to reread the Attorney General's opinion. Mr. O'Hearn stressed that the document should be easy to read. Ms. Saunders-Hawranek agreed that readers would be put off if the language were too legalistic. Mr. O'Hearn suggested changing the wording on the role of the City Attorney in the second paragraph of the section on executive sessions to read: "To assure strict compliance with state law, the City Attorney, or designee, shall be present at, and actively protect the letter and spirit of Open Meeting Laws at all Council meetings, all Council executive sessions..."

He suggested further editorial changes to the section, including strengthening the wording in the first full paragraph on page 7 by prohibiting participants in executive sessions from revealing even the general tenor of the discussions. Upon further discussion, Mr. Schade stated that participants should not reveal substantive facts and issues. He noted that the decision to go into executive session might not be unanimous. Ms. Saunders-Hawranek favored the expression "strictly confidential".

A further discussion ensued on whether the City Attorney should be excluded from executive sessions for which personnel matters are the topic. Mr. Derouin suggested changing the second sentence of the second paragraph of the section on executive sessions as follows: "The City Attorney, or designee, will not attend those portions of executive sessions..."

Mr. Bruner noted that the Code documents what constitutes a conflict of interest and makes it clear that an official in a position of conflict cannot participate in the City's decision-making process. However, this does not prohibit the individual from pursuing this matter in their profession.

Discussion then ensued on the time limit for declaring a conflict of interest. It was agreed that the prohibition on voting is effective immediately. Mr. Bruner suggested that there should be a limit of three business days to file an updated Personal Interest Disclosure Form with the City Clerk's office.

Chairman DeCabooter drew the attention of the meeting to the descriptions of Task Force Members on page 9. Mr. Delaney noted the changes requested by Task Force Members to their respective descriptions.

Chairman DeCabooter remarked that he would like all Members of the Task Force to sign the final document.

The Task Force Members discussed the final paragraph in the document. Mr. Delaney reminded Members that the City Attorney's office must update the matrix annually to reflect any changes in the law. Upon reflection, the consensus was to remove paragraph 8 from the document.

Mr. Delaney noted that he is not certain how the City normally handles ordinances. To make the program enforceable he stated that the Code of Ethical Behavior has to be adopted as an

ordinance. He was not sure whether the City of Scottsdale Public Service Ethics Program would have to be adopted as an ordinance or by resolution of City Council. He undertook to ascertain this with the City's legal department.

2. DISCUSSION OF PROCEDURE FOR FORMAL PRESENTATION OF ETHICS POLICY/PROGRAM TO CITY COUNCIL

Chairman DeCabooter noted that this discussion would take place at the next meeting.

3. FUTURE MEETING SCHEDULE AND AGENDA ITEMS

The next meeting is scheduled for Wednesday, February 22, 2006 at 5:00 p.m. Mr. Derouin noted he is unable to attend but will submit written comments. Chairman DeCabooter expressed the hope that the Task Force will arrive at a unanimous document to present to City Council. Task Force Members concurred.

4. OPEN CALL TO THE PUBLIC

Mr. Michael Kelly addressed the meeting. He voiced the concern that it be clear that the City has the authority to enforce the Code. He noted that the expression "vested interest" is not defined. The disclosure form uses the term "substantial interest." He recommended consistency.

Referring to the Scottsdale General Plan, Mr. Kelly stated that the Code should include an explanation of how the General Plan was ratified by the electorate.

Mr. Kelly reiterated his concern about constituent service. It might be appropriate to use this expression in the section dealing with undue influence on subordinates. He added that self-disclosure is very important.

Mr. Kelly concluded by suggesting that the cover letter accompanying the document could serve as a vehicle to discuss other issues and concerns of the Task Force.

Thanking the members of the Task Force for their dedication, effort, and acumen, Mr. Kelly remarked that the program they have put together far exceeds expectations. This is a very complicated matter.

ADJOURNMENT

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 7:31 p.m.


Respectfully submitted by:

Valerie Wegner
Administrative Secretary, Human Resources



Reviewed by:

Art DeCabooter, Chair



Officially approved by the Citizen Code of Ethics Task Force on February 22, 2006.